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Magalie R. Salas, Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: CC Docket No. 99-200

Dear Ms Salas:

Enclosed for filing please find an original and five copies of the Opposition of the Maine Public Utilities Commission to Petitions for Reconsideration.

Respectfully submitted,


Trina M. Bragdon

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of:

Numbering Resource Optimization

CC Docket No. 99-200

**OPPOSITION OF THE MAINE PUBLIC UTILITIES
COMMISSION TO PETITIONS FOR RECONSIDERATION**

The Maine Public Utilities Commission (MPUC) respectfully submits these comments in opposition to the Petitions for Reconsideration filed by SBC Communications (SBC), United States Telephone Association (USTA), Sprint Corporation (Sprint), Bellsouth Corporation (Bellsouth), Cingular Wireless, LLC (Cingular), Verizon Wireless, WorldCom, Inc. (WorldCom), and Cellular Telecommunications & Internet Association (CTIA). The MPUC urges the Federal Communications Commission (Commission or FCC) to:

- (1) Deny the Petitions of SBC, USTA, Cingular, and Verizon Wireless which request that the Commission require the MPUC to lower its utilization threshold from 75% to 60%;
- (2) Deny the Petition of WorldCom which requests that pooling carriers be exempt from meeting utilization thresholds;
- (3) Deny the Petitions of Sprint, Bellsouth, Cingular, and CTIA which request that the Commission further delay wireless industry implementation of pooling; and

(4) Deny the Petition of Sprint which requests that the Commission clarify that states do not possess independent authority to conduct state-only audits.

I. STATES WITH UTILIZATION THRESHOLDS OF 75% OR BELOW SHOULD BE ALLOWED TO CONTINUE TO ENFORCE THEIR STANDARDS

Contrary to the claims of SBC, USTA, Cingular, and Verizon Wireless, enforcement of a 75% utilization threshold both encourages efficient usage of numbering resources and provides carriers with ample access to numbering resources.

A. The Record Before The FCC Clearly Supports The FCC's Decision To Allow A Higher Threshold In Maine.

Petitioners claim that there is no reasonable basis or record for the FCC to allow Maine's higher threshold to stand and that studies must be done to examine the impact the threshold has had. To the contrary, the ample record before the FCC supports the MPUC's utilization threshold, and there is no need for further studies.

First, the record before the Commission clearly supports leaving Maine's 75% threshold in place. In its August 14, 2000 Petition for Waiver To Continue State Pooling Trials Until National Pooling Is Implemented, the MPUC pointed out that the exhaust date for the 207 NPA has continued to move further and further into the future, unmistakable evidence that conservation measures such as our utilization threshold are working. We also pointed out that carriers have consistently over-estimated the number of blocks or codes they will need. Indeed, a recent calculation by MPUC staff shows that in the 207 pooling trial, carriers have overestimated their needs by more than 2000%. Having a significant utilization threshold in place requires carriers to more

carefully examine their numbering needs rather than rely upon overly optimistic marketing projections as the basis for requesting resources.

In addition, in earlier filings in this docket, the MPUC has pointed out the very low utilization rates found in Maine. These rates are due not only to inefficient usage but to a generally slow-growing telecommunications market. Maine is a rural state with a small population – the sheer mathematics result in very low growth rates. Thus, in Maine a carrier can meet a 75% threshold and still have more than enough time to request and acquire additional resources before they are actually needed.

B. The MPUC Has Been Successfully Enforcing a 75% Utilization Threshold Since November 1999.

The MPUC ordered the implementation of a 75% utilization threshold on November 4, 1999. Since that time, this standard has been enforced by the MPUC, NANPA, and NeuStar as carriers apply for growth codes and blocks. The MPUC has yet to receive a complaint from a carrier claiming that it was being denied needed resources because of the threshold. Given that carriers have been complying with this standard for more than a year and a half, it makes no sense to take a step backwards and allow them to meet a lower standard. This is especially true in a state like Maine where there have been no complaints regarding the threshold and the overall utilization rates of most carriers are very low.

C. Maine Has Very Few Multiple Switch Rate Centers and Uses the FCC's Formula For Calculating Utilization Rates

The Petitioners also claim that carriers with multiple switches in the same rate center cannot meet the 75% threshold if utilization is calculated using the FCC's formula. USTA specifically claims that neither Maine nor California uses the FCC's

formula. The Petitioners' claims are both wrong. First, Maine has few rate centers with multiple switches, less than five percent of the total. Thus, the "problem" alleged by the Petitioners is very limited in Maine and we have yet to hear a complaint from any carrier on this issue. Second, contrary to USTA's claims, Maine does use the FCC's method for calculating utilization rates. While we initially used a different formula, we converted to the FCC formula when the FCC issued its First Report and Order in March of 2000.¹ Given that we use the FCC's formula, USTA's claim that carriers would have to prepare a separate NRUF for Maine also fails; carriers have filed, and will continue to file, NRUF data in Maine according to the FCC's rules and requirements.

In conclusion, the MPUC urges the Commission to deny the Petitioners' requests to lower the utilization threshold in Maine to 60%. We have demonstrated numerous times that the specific conditions in Maine warrant the application of a higher threshold and that carriers have not been denied access to numbering resources because of the threshold.

II. POOLING CARRIERS SHOULD BE SUBJECT TO UTILIZATION THRESHOLDS

The Commission should uphold its earlier decision to apply utilization thresholds to pooling participants. As the MPUC pointed out in its July 14, 2000 Petition for Reconsideration and Clarification, utilization thresholds promote efficient number usage and mitigate carrier reliance on overly-optimistic forecasts. They also provide pooling

¹See October 13, 2000, Ex Parte Letter providing information relating to state commissions' implementation of utilization thresholds.

administrators with an objective measure of a carrier's need for growth resources rather than the subjective measure provided by a Months to Exhaust Worksheet.

WorldCom claims that there is no evidence to support the Commission's decision and points to pooling trials that have not used thresholds as evidence that thresholds do not have an impact on the effectiveness of pooling. WorldCom goes so far as to claim that there is "no evidence of unjustified block requests" in Illinois. WorldCom's statements are very puzzling given recent developments in Illinois. Earlier this year, the Illinois Commerce Commission was informed that the 847 NPA was reaching exhaust and that a new overlay should be implemented. However, the Illinois Citizens Utility Board soon petitioned the ICC to halt plans to implement the new NPA because it appeared that 847 was not really exhausted. Specifically, the Illinois CUB claimed that many carriers had very low utilization rates and large reserves of unused numbers. Clearly, if pooling carriers in Illinois had been subject to utilization rates, number resources would have been more effectively allocated. Thus, WorldCom's claims regarding pooling trials without thresholds should be dismissed.

In addition, Maine has applied its utilization rate to pooling carriers since last June. We have not had any complaints regarding this practice. We have had very few, if any, requests for growth blocks since our pool began. Instead, the recent trend is for carriers to voluntarily give back blocks that they are not using or donate additional blocks. Accordingly, the MPUC urges the Commission to deny WorldCom's request and to continue to apply utilization thresholds to pooling carriers.

III. THE COMMISSION SHOULD NOT DELAY WIRELESS IMPLEMENTATION OF POOLING

Faced with a Commission decision refusing to further delay wireless implementation of pooling, carriers are now resorting to scare tactics and misinformation to get the Commission to back away from the November 24, 2002 deadline. As the MPUC has stated numerous times, the Commission should not extend the wireless porting and pooling deadline. Wireless carriers have had two extra years to get ready for portability. They have been on notice since March 2000 of the need to be pooling-capable by the porting deadline. Extension of the deadline will only result in further foot-dragging by the wireless industry.

Claims of a need for a transition period because of potential technical difficulties should be rejected. While it is certainly plausible that technical issues may arise, the industry should have planned for this fact and included it in its schedule so that by November 2002 the system would be operable. Claims that wireless pooling will begin instantaneously in all top 100 MSAs are untrue. National rollout of pooling will not begin until at least January 2002 and thus by November only a quarter of the top 100 MSAs will be pooling. Claims that wireless carriers will be subjected to various pooling methodologies in different states are untrue. By the time wireless carriers are ready to pool, state trials will have transitioned to the national protocol. Complaints about the transition being at the worst time of the year should be ignored – the industry has known about this deadline for years and has more than enough time to plan around it.

In conclusion, the wireless industry is hurling everything they have at “the wall” and hoping that something sticks. The Commission should send them back a very clear message: stop complaining, get to work, and get it done.

IV. THERE IS NO NEED FOR THE COMMISSION TO CLARIFY IT RULING REGARDING STATE AUTHORITY TO CONDUCT AUDITS

The Commission should deny Sprint's request that the Commission confirm that states do not possess independent authority under state law to conduct number utilization audits. While the FCC may have exclusive jurisdiction over the North American Number Plan as it pertains to the United States, it does not have plenary authority over every issue that may tangentially relate to phone numbers. Indeed, there is nothing in the Telecommunications Act of 1996 that strips state commissions of their inherent authority to regulate the conduct of carriers who operate in their states.

By virtue of state statutes, 35-A M.R.S.A. §§ 112-113, the MPUC has the authority to inquire into the management of the business of all public utilities and require the production of all information necessary for the MPUC to perform its duties under Maine law. If the MPUC determines that a particular carrier's practices are suspect, it has the authority to initiate an investigation. If the practices at issue relate to numbering issues, the MPUC expects that it would consult with the FCC and determine the proper course of action.

Sprint's claim that the MPUC must turn a blind eye to any numbering related issues in Maine flies in the face of the import of the FCC's numbering decisions over the past two years. While the FCC has maintained general federal jurisdiction over numbering issues, it has explicitly delegated much of its authority to states and implicitly made state commissions the "watch dog enforcer" of many federal requirements. While it is clear that carriers prefer as little state involvement as possible, perhaps because we have been effective in promoting efficient use of number resources, the

FCC has made it very clear that state commissions will continue to be a partner with the FCC in managing a scarce national resource.

The MPUC understands the FCC's concerns regarding the confusion and duplicative efforts that would arise if state commissions conducted their own complete rounds of audits. The MPUC has no such plans. However, we reserve the right to investigate any carrier we believe is violating either state or federal numbering rules and determine whether corrective action is necessary. We pledge to work with the FCC to ensure there is a complete sharing of information and to minimize any duplicative efforts.

V. CONCLUSION

For the reasons stated above, the MPUC urges the Commission to deny the Petitions for Reconsideration of SBC, USTA, Sprint, Bellsouth, Cingular, Verizon Wireless, WorldCom and CTIA.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Trina M. Bragdon".

Trina M. Bragdon
Staff Attorney
Maine Public Utilities Commission

Dated: April 12, 2001

CERTIFICATE OF SERVICE

I, Trina M. Bragdon, certify that on this day the Opposition of the Maine Public Utilities Commission to Petitions for Reconsideration were served via first-class mail to the persons on the attached service list.


Trina M. Bragdon

Dated: April 12, 2001

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